



## Board Can't Prohibit Members' Assembly

Fort Myers The News-Press, March 29, 2007

By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

**Q:** I recently asked the manager of my condominium association if I could reserve our clubhouse for a meeting of unit owners who are concerned about the operation of the association. I was given a long list of conditions I must satisfy before I will be given access to the clubhouse. I feel these restrictions are unfair and designed to limit my ability to provide advance notice of the meeting to the unit owners. Can the association adopt rules to prevent me from using the clubhouse? - B.S. (via e-mail)

**A:** The Florida Condominium Act provides that all the common elements, common areas, and recreational facilities serving a condominium are available to unit owners in the condominium, and your association may not prevent you from exercising your right to peaceably assemble in those places. The declaration governing your condominium, however, may contain some restrictions on the use of the clubhouse by the members of the association. Also, the Condominium Act provides that the association may adopt reasonable rules and regulations pertaining to the use of the common elements, common areas and recreational facilities. Any such rules must be adopted in a procedurally correct manner. Assuming that the rules provided to you by the association are "reasonable" and were adopted in a procedurally correct manner, then you

will likely have to comply with them if you wish to use the clubhouse, but I do not think the board can ban your right to assemble altogether.

**Q:** We are going through the budget planning for our condominium. The sticking point is the insurance. Some residents are insisting on one hundred percent coverage, while others are satisfied with eighty percent coverage. Since our maintenance fees have increased by more than thirty percent, we are trying to make this affordable to all involved. How are other condominium associations managing this situation? M.S. (via e-mail)

**A:** The Florida Condominium Act requires that a unit-owner controlled association use its best efforts to obtain and maintain adequate insurance to protect the association, the association property, the common elements, and the condominium property required to be insured by the association as set forth in the Condominium Act. An ongoing question surrounds the precise meaning of "adequate" insurance. A literal, and conservative, reading of this language would suggest that the insurance should cover the total insurable value of the building. In the event that the entire development is destroyed, hindsight will show that insurance in an amount less than the total insurable value of the structures was inadequate. Therefore,

the most conservative approach is to insure the property for the total insurable value of the improvements. In many cases, the specific language of the declaration of condominium removes any doubt as to the appropriate amount by requiring insurance in the amount of the total insurable value of the structures. Therefore, you must carefully review your declaration to determine if there are any specific insurance requirements set forth therein, and comply with those requirements.

Another frequent subject concerning insurance involves the appropriate amount of the deductible. As you may know, the Condominium Act permits the association's insurance to include a reasonable deductible, as determined by the board. Because insurance policies, particularly windstorm policies, will be less expensive if the deductible is higher, many associations explore the possibility of having a deductible. There has been little guidance concerning what is "reasonable", until recently when the Florida Legislature passed House Bill 1A, which was signed into law by Governor Crist in January, 2007. One portion of that new law attempts to clarify what constitutes a "reasonable" deductible, and advises associations that the determination of a reasonable deductible can be based upon other available funds to the association or based upon an analysis of the assessment authority of the association at the time the insurance is obtained. In other words, the statute seems to indicate that each association may determine a reasonable deductible based on its particular financial condition and its particular authority to obtain funds from the members through assessments.

**Q:** Can you tell me if architectural control committee meetings are open to the public. My community does not allow anyone to attend an architectural control committee meeting. Can they legally prevent owners from attending these meetings? D.L. (via e-mail)

**A:** Chapter 720 of the Florida statutes, commonly called the Florida Homeowner's

Association Act, states that all meetings of the board of directors of an association must be open to all members. In addition, the meetings of any committee, when a final decision will be made regarding the expenditure of association funds, and the meetings of any body vested with the power to approve or disapprove architectural decisions with respect to an owner's parcel, must also be open to the members in the same manner as board meetings. Therefore, meetings of an architectural control committee which has the power to approve or disapprove architectural decisions must be open to the members and the notice of the meetings must be provided in the same manner as a board meeting.

Some architectural control committees, however, do not have the power to approve or disapprove architectural decisions, but only make recommendations to the board of directors. In those cases, the architectural control committee would not need to open its meetings to the members. You will need to look at your governing documents to determine whether your architectural control committee has the power to approve or disapprove architectural decisions, or whether it only makes recommendations to the board. You should also review the documents to determine whether they impose any notice and meeting requirements for architectural control committee meetings.

In a condominium, it is less common for there to be an architectural control committee, but some condominiums do have them. In the case of a condominium, the Florida Condominium Act provides that a meeting of a committee to make recommendations to the board regarding the proposed annual budget, or to take final action on behalf of the board, must be noticed and open in the same manner as board meetings. Therefore, if the architectural control committee is to take final action on behalf of the board, its meetings would need to be noticed and open. Further, the Condominium Act provides that other committee meetings must also be open, and properly noticed,

unless those meetings are exempted from such requirements by the association's bylaws. Therefore, even if the architectural control committee is only making recommendations, its meetings would still have to be noticed and open unless the bylaws specifically exempt the committee.

**Q:** Do owners have the right to view the condominium association's records that list the owners and the amount they are in arrears of their maintenance fees and fines? B.T. (e-mail)

**A:** The Florida Condominium Act requires the association to maintain several types of records, called the "official records" of the association. The official records include accounting records. The Condominium Act specifically requires that a condominium association's accounting records be maintained for a period of not less than seven years, and that such records include, in part, a current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

Additionally, the Condominium Act requires the official records to be made available to a unit owner within five working days after receipt, by the board or its designee, of a written request. The official records of the association are open to inspection by any association member, or the member's authorized representative, at all reasonable times, and the right to inspect the records includes the right to make any copies, at the expense of the member.

There are, however, some documents that are not accessible to unit owners, including: records protected by the lawyer-client privilege or the work-product privilege; information obtained by the association in connection with the approval of the lease, sale, or other transfer of a unit; and medical records of unit owners.

The Florida Homeowners' Association Act also requires associations to allow the inspection and copying of official records. While a good portion of records inspection and copying in a homeowners setting is similar to the condominium setting, the records must be made available within ten business days after receipt of a written request, as opposed to five working days. The Homeowners' Association Act excludes the same records from being accessible to members as the Condominium Act, but also denies access to disciplinary, health, insurance, and personnel records of the association's employees.

### FREE COURSE ON OPERATIONS OF FLORIDA COMMUNITY ASSOCIATIONS TO BE HELD IN FORT MYERS.

A free course on operations of Florida condominium associations will be held on Tuesday, April 3, 2007 from 9:00 am to 12:00 noon at the Seven Lakes Condominium Association, 1965 Seven Lakes Blvd., in Ft. Myers, FL (across from Bell Tower Shops). The course will be taught by Community Associations Institute (CAI), the designated condominium and cooperative educational provider of the State of Florida's Department of Professional and Business Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes.

The course focuses on the core responsibilities of associations. It touches on practical operational needs such as self-management, the bidding process for outside service providers, maintenance issues, accounting and legal services and how to plan for and conduct board meetings. Please note that this course does not count for manager CEUs for community association managers.

Registration is required, because space is limited. To reserve a space, please call Laura Hagan at 727-525-0962 or e-mail [fleducation@caionline.org](mailto:fleducation@caionline.org). Course seating may be limited to one owner occupant per condominium unit based on space

availability. To see a complete list of classes in your area, visit [www.caionline.org/florida](http://www.caionline.org/florida).

*Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.*

*Send questions to Joe Adams by e-mail to [jadams@becker-poliakoff.com](mailto:jadams@becker-poliakoff.com) This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at [www.becker-poliakoff.com](http://www.becker-poliakoff.com).*